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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,233	01/17/2008	Karen Elizabeth Barrett	T3106(C)	8248

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EXAMINER

DAVIS, DEBORAH A

ART UNIT	PAPER NUMBER
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1655

NOTIFICATION DATE	DELIVERY MODE
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12/17/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

Office Action Summary	Application No. 10/583,233	Applicant(s) BARRETT ET AL.	
	Examiner DEBORAH A. DAVIS	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 8-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9-27-06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election of Group 1, claims 1-7 in the reply filed on 11-24-09 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Objections

Claim 1 and 3 is objected to because of the following informalities: The limitation "ginseng Rc" should be followed by a comma. Appropriate correction is required.

Also, the limitation "ginseng Rc" and "ginseng Rb1" should be identified as ginsenoside Rc and ginsenoside Rb1 because they are glucosides of ginseng.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-3 provides for the use of a composition, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 1-3 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper

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definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4 recites the limitation “psychologically-mediated stress” on the skin is vague because it is unclear as to the metes and bounds of this limitation.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over rejected over Shefer et al. (US 2003/0232091).

The claims are drawn to the use of a composition and method capable of inhibiting glucocorticoid-induced chronic stress in a dermal cell or a cell involved in skin

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inflammatory responses in the manufacture of a composition for use in reducing the effects of psychologically-mediated stress on the skin of a human or animal, wherein the first substance is selected from the group consisting of ginseng Rb1, ginseng Rc, curcumin, 22-OH-cholesterol, ciglitazone, mevinolin, commiphelic acid, okadaic acid, licorice extract and mixtures thereof; and a second substance selected from the group consisting of wolfberry extract, shiitake extract, activin, ginseng Rb1, ginseng Rc, curcumin, ciglitazone, commiphelic acid, boswellia extract and mixtures thereof, provided that said first substance and substance are different.

As stated above, claims 1-3 recite a use of a composition without positive method steps and therefore it is not clear whether applicant intends to claim a method or a composition. However, for examination purposes, the instant claims 1-3 will be examined as a composition.

The reference of Shefer et al. beneficially teaches a dermatological composition that can comprise ginsenoside Rc, curcumin, and licorice as active ingredients. The licorice of the dermatological has anti-inflammatory properties (see paragraph 0107, e.g.). Other anti-inflammatories can be included such as hydrocortisone, which is a glucocorticoid (see paragraph 0098, e.g.). The first and second substances are different, as required by the instant claims. The composition can be administered orally in a food form can be administered topically in the form of a skin cosmetic, as claimed (see paragraphs 0081, 0110, 0130, and 0133, e.g.).

The reference of Shefer et al. does not expressly teach the active step of administering the composition to an individual.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to administer the cited composition to an individual based on its anti-inflammatory properties for skin care.

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the reference, especially in the absence of the evidence to the contrary.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being obvious over Jau-Fei Chen PCT Publication (WO 00/64278).

The reference of Chen beneficially teaches the instant claims by disclosing a composition comprising a powdered food supplement prepared by incorporating ginseng berry, licorice and other ingredients therein as active ingredients (see Examples 3-4, pages 14, e.g.). Chen teaches that ginseng berry can be combined in a composition with other health promoting ingredients that may include licorice, turmeric (curcumin), as claimed (see page 12, e.g.). The compositions of Chen can be made for oral or topical consumption by the consumer. Since the active ingredients are the same as instantly claimed, it would appear that the cited composition would be able to perform the functional limitations of being capable of inhibiting glucocorticoid induced chronic stress in a dermal cell or a cell involved in skin inflammatory responses. Especially since licorice is known to have anti-inflammatory properties.

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Although the active ingredients of licorice and turmeric (curcumin) can be included in the composition of Chen, the composition does not expressly include the active ingredients of licorice and turmeric (curcumin).

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further include the active ingredients of licorice and turmeric (curcumin) in the composition of Chen base on the health promoting benefits for overall health.

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the reference, especially in the absence of the evidence to the contrary.

Conclusion

No claims are allowed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mahe et al. (US 2004/0101503) relates to a composition to enhance the skin's resistance to complement.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEBORAH A. DAVIS whose telephone number is (571)272-0818. The examiner can normally be reached on 8-5 Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Deborah A. Davis
Patent Examiner, AU 1655
December 2009

/Christopher R. Tate/
Primary Examiner, Art Unit 1655